

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**ERICA SILBERSTEIN, on behalf of
herself and on behalf of all
others similarly situated**

Plaintiff,

v.

CASE NO.: 8:19-cv-02800-SCB-AAS

**PETSMART, INC.,
A foreign, profit corporation**

Defendant.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING

A court authorized this Notice. This is not a solicitation from a lawyer.

This **Notice of Proposed Class Action Settlement and Hearing** provides important information regarding your right to participate in or to opt out of a proposed settlement in a class action lawsuit. Named Plaintiff, Erica Silberstein (“Plaintiff”), filed a lawsuit against Defendant Petsmart, Inc. (“Defendant” or “PetSMART”) in which she alleges that the COBRA Notice she received from or on behalf of Defendant was deficient. Defendant disputes the allegations and has asserted its Notice complied with all applicable laws. That case is pending in the U.S. District Court, Middle District of Florida (Tampa Division) and the judge has not made any determination about who is right or wrong in the case. A summary of the claims asserted in the lawsuit and the proposed settlement follows.

- The notice at issue is referred to as a “COBRA” Notice and the continuation of health insurance coverage after separation of employment is called “COBRA continuation coverage,” after the Consolidated Omnibus Budget Reconciliation Act of 1985. That Act requires an employer to send a COBRA notice to employees within 44 days after the end of a person’s employment. The COBRA notice is designed to provide former employees who were covered under employer sponsored group healthcare plans with information and details regarding their right to continue their healthcare coverage and the terms and conditions of that COBRA continuation coverage. 29 U.S.C. §1166(a) (2), (a)(4), (c).

- The lawsuit generally alleges Defendant provided Plaintiff and other putative class members with a deficient COBRA Notice. More specifically, Plaintiffs asserted that Defendant’s COBRA Notice did not adequately inform her of how to exercise her rights to elect COBRA coverage. Plaintiff asserted that, in alleged violation of 29 C.F.R. § 2590.606–4(b)(4) *et seq.* the Notice failed to: (i) include a date certain on which continuation coverage ends; (ii) identify the Plan Administrator; and, finally, (iii) be written in a manner calculated to be understood by the average plan participant. As a result of the alleged violations in the Complaint, Plaintiff sought statutory penalties, injunctive relief, attorneys’ fees, costs and expenses on behalf of herself and all others similarly situated.

- Defendant denies that its COBRA Notice was deficient in any manner and denies that it has any

liability to Plaintiff whatsoever. Rather, Defendant has asserted that its COBRA Notice complied with any and all relevant laws, including COBRA and ERISA. Furthermore, had the parties proceeded in the litigation, Defendant further denies that the matter would have proceeded on a class action basis.

- At this point in the case, the presiding judge has not made any determination about who is right or wrong. Rather, instead of proceeding with potentially years of litigation with uncertain outcomes, the parties have agreed to resolve the lawsuit through a Court-supervised settlement to avoid further cost and uncertainty.

- Plaintiff proposed to settle this dispute on behalf of herself and all other former employees who received the same COBRA Notice and did not elect COBRA coverage because they participated in the group healthcare plans sponsored by Defendant. The class definition is as follows: “All participants and beneficiaries in the Defendant’s Health Plan who were sent a required COBRA notice by Defendant, between November 12, 2015 and November 5, 2018 and who did not: (i) elect COBRA or (ii) execute an arbitration agreement with a class and collective waiver.” (referenced herein as the “Settlement Class”).

- Membership in the Settlement Class will be determined based upon Defendant’s records reflecting who received the specific COBRA Notice at issue. It is estimated that the Settlement Class is comprised of 12,170 potential members.

- You received notice of this settlement by mail which directed you to this website because Defendant’s records indicate that you are eligible to receive benefits from this proposed class action settlement.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice. Here is a brief summary of your rights and options.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Do Nothing	If you do nothing and the Court approves this settlement, you will receive a settlement payment. As a member of the Settlement Class, you will release Defendant from any potential liability regarding the COBRA notice and the issues raised in this lawsuit.
Ask to be Excluded by November 10, 2020	If you do not want to be included in the case and the settlement, you must take action to exclude yourself. This is called “opting out.” To opt out, you must state in writing that you have elected to opt out of the case and the settlement, and send your written notice to the Settlement Administrator by November 10, 2020. If you elect to opt out, you may pursue your own action against Defendant for the claims raised in this case if you choose to do so.
Object by November 10, 2020	You may write to the Court about why you don’t like the settlement, if you object to any of its terms. To object to the settlement you must: (i) state your objection with specificity; (ii) state whether your objection pertains only to yourself or some or all of the Settlement Class; and (iii) return your objection timely. You may not file an objection if you opt out of the settlement.
Go to a Hearing on December 4, 2020	If you wish to be heard, you may attend the Final Approval Hearing and ask to speak in Court about the fairness of the settlement. You are not required to attend the hearing. If you opt out, you may not present your opinions regarding the settlement at the Final Approval Hearing.

The Court still has to decide whether to approve this settlement, which may take some time, as explained below.

TABLE OF CONTENTS

Basic Information.....	4
1. Why did I receive a notice?	4
2. What is the lawsuit about?	4
3. Why is this case a class action?	4
4. Why is there a settlement?	5
Who Is Included In The Settlement	5
5. How do I know if I am part of the settlement?	5
The Settlement Benefits—What You May Receive	5
6. What does the settlement provide?	5
7. How do I receive a benefit from the Settlement?	5
8. When would I receive my benefit?	6
9. What am I giving up to receive a benefit or stay in the class?.....	6
10. Do I have to participate in the Settlement?.....	6
11. If I don't exclude myself, can I sue Defendant for the same thing later?	6
12. If I exclude myself, will I receive any benefits from this settlement?.....	7
The Lawyers Representing the Settlement Class.....	7
13. Will I have a lawyer in this case?	7
14. How will Class Counsel be paid?	7
Objecting to the Settlement.....	7
15. How do I tell the Court that I don't like the settlement?	7
16. Is there a difference between objecting and opting out?.....	8
17. Where and when will the Court decide whether to approve the settlement?.....	8
18. Do I have to come to the hearing?	8
19. May I speak at the hearing?	8
Getting More Information.....	9
20. Are there more details about the settlement?.....	9
21. How May I get more information?	9

1. Why did I receive a notice?

You were sent notice by mail of this proposed settlement because you are a member of the settlement class. Composition of the Settlement Class is based upon Defendant's records. The Notice of Settlement you received by mail directed you to the Settlement Administrator's website which provides additional information regarding this settlement, including this more detailed Notice of Proposed Class Action Settlement and Hearing. You as a potential member of the Settlement Class have a right to know about the proposed settlement of this case as a class action and about your options to participate as a Settlement Class Member, your ability to object to the settlement terms as a class member, or to opt out of the settlement, before the Court decides whether to grant final approval of the settlement. If the Court approves the settlement, and after all objections or appeals relating to that settlement are resolved, the benefits provided for by the settlement will be available to all Settlement Class Members who have not elected to opt out.

This Notice explains the lawsuit, the proposed settlement, your legal rights, the settlement benefits and who will be eligible to receive a benefit from the settlement fund, and the basis upon which benefits will be paid. A copy of the Settlement Agreement is available to Settlement Class Members on this website.

2. What is the lawsuit about?

Plaintiff filed this putative class action against Defendant for allegedly providing a defective COBRA notice to her and other putative class members. As set forth in the Complaint, Defendant was the plan sponsor of a group Health Plan ("Plan") in which Plaintiff participated. After Plaintiff experienced a "qualifying event" Defendant provided a COBRA Notice to Plaintiff which Plaintiff asserts is deficient for, among other things, its alleged failure to: (i) include a date certain on which continuation coverage ends; (ii) identify the Plan Administrator; and, finally, (iii) be written in a manner calculated to be understood by the average plan participant. Defendant has denied that the Notice contained any purported deficiencies.

Due to these alleged deficiencies, Plaintiff alleges that Defendant failed to provide participants and beneficiaries in the Plan with adequate notice of their right to elect continuation coverage, as required by COBRA.

Defendant disputes the Plaintiff's allegations and denies all liability to Plaintiff and the Settlement Class. Defendant has affirmatively asserted that the Notice at issue complied with any and all applicable laws. In the lawsuit, Defendant denied Plaintiff's allegations and asserted a number of defenses. Further, Defendant has, at all relevant times, asserted that Plaintiff's claims are not appropriate for class action treatment in the absence of a settlement.

Although the Court has authorized this Notice of Proposed Class Action Settlement, the Court has not determined or ruled upon the merits of the claims or defenses asserted by either side in the lawsuit. The Court has not found Defendant violated the law in any way. The Court has not found that the Plaintiff would prevail in this case. The Court has not made any determination that Plaintiff will recover any damages in this litigation.

3. Why is this case a class action?

Class actions are lawsuits in which the claims and rights of many people are decided in a single proceeding. In a class action, as here, the Plaintiff ("Class Representative") seeks to assert claims on behalf of herself and all members of a putative class who received the same allegedly deficient COBRA notice. In a class action, individuals with similar claims are generally treated alike. The Court will supervise the prosecution of the class claims by Counsel for the Settlement Class to assure that all members of the settlement class are adequately and fairly represented. Settlement Class Members are not individually responsible for the costs or fees of Class

Counsel, which are subject to court award and which will be paid out of the Settlement Fund.

4. Why is there a settlement?

The Court has not decided the merits of this case in favor of the Class Representative or in favor of Defendant. Instead, Counsel for the Settlement Class investigated the facts and applicable law regarding the Class Representative's claims and Defendant's defenses. The parties engaged in lengthy and arm's-length negotiations to reach this settlement. The Class Representative and Counsel for the Settlement Class believe that the proposed settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class Members.

Both sides agree that, by settling, Defendant is not admitting any liability or that Defendant did anything wrong. Both sides want to avoid the uncertainties and expense of further litigation.

Who Is Included In The Settlement

5. How do I know if I am part of the settlement?

You are included in the settlement if you fit the definition set forth in Paragraph 1. If you received a notice of settlement in the mail, Defendant's records indicate you are a member of the Settlement Class. If you are not certain as to whether you are or should be a member of the Settlement Class, you may contact the Settlement Administrator to find out. In all cases, the question of settlement class membership will be determined based on Defendant's records.

The Settlement Benefits—What You May Receive

6. What does the settlement provide?

If you are a member of the Settlement Class, you are eligible to receive a benefit under the settlement. Defendant has agreed to pay a total of \$500,000 into a Settlement Fund. The Settlement Fund will be divided equally on a pro rata basis among all Settlement Class Members who do not opt out of the settlement. The gross amount payable to each Settlement Class Member (assuming all potential members participate) will be approximately \$41.09. However, certain deductions will be made from the Settlement Fund, as approved by the Court, for Class Counsel's attorneys' fees and costs, a service award to the Class Representative, and costs of settlement administration. If the Court awards the amount sought for these awards and expenses, the net amount payable to each class member will be reduced to approximately \$23.37.

If any funds remain in the settlement account after all checks have been distributed to Settlement Class Members and the 60-day period for cashing the settlement checks has expired, and after all attorneys' fees, expenses and administrative costs have been paid, the remaining unclaimed funds will constitute a "*cy pres*" fund and will be paid to a non-profit beneficiary, upon the Court's approval. The parties have proposed to award the *cy pres* fund to a non-profit corporation, Bay Area Legal Services.

7. How do I receive a benefit from the Settlement?

To receive your settlement payment, you do not have to do anything. Your interest in this matter will be represented by the Plaintiff as Class Representative and Class Counsel. As a Settlement Class Member, you will be bound by the terms of the Settlement Agreement and any judgment arising from the settlement. If the Court approves the settlement at or after the Final Approval Hearing, you will automatically receive a settlement check for your share of the funds remaining in the Settlement Fund after deduction for Court-approved awards and expenses.

8. When would I receive my benefit?

The Court will hold a Final Approval Hearing on December 4, 2020 at 9:00 a.m. at the United States District Court for the Middle District of Florida, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, Courtroom 13B, to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals or objections that must be resolved before the settlement will become effective. Settlement payments to members of the Settlement Class will be made only if the settlement is finally approved by the Court and only after all appeals or objections are resolved. This may take some time, so please be patient. You may check on the status of this approval process by visiting this website.

9. What am I giving up to receive a benefit or stay in the class?

Upon the Court's approval of the settlement, all members of the Settlement Class who do not exclude themselves (as well as spouses, heirs, and others who may possess rights on their behalf) will fully release Defendant, its then-third party healthcare provider and its outsourced third party COBRA administrator, any other Released Party as defined in the Settlement Agreement (and, for each of them, their affiliates, subsidiaries, employees, and others who may be subject to claims with respect to each of them as specified in the Settlement Agreement) from any and all claims arising out of the facts alleged in the Complaint filed in the Action, including but not limited to any and all claims relating to the COBRA notices issued or the cessation of employment that were or could have been asserted in this Action, including but not limited to loss of wages and benefits or loss of earning capacity. No individual claims by class members for benefits under ERISA are subject to this waiver, except to the extent the claim for benefits or disputed benefits related to the alleged failure to receive a proper COBRA notice. Similarly, no 401(k)-related or ERISA breach fiduciary duty claims are released beyond those alleged in the Lawsuit.

10. Do I have to participate in the Settlement?

No. You may choose to be excluded from the Settlement and you will not be bound by the Settlement Agreement or any judgment or other final disposition of the lawsuit. You will retain any claims you may have against Defendant, and Defendant will retain any defenses it has to your claims. To request exclusion, you must state in writing your desire to opt out and to be excluded from the Settlement Class. **Your request to opt out which will exclude you from the Settlement must be sent by first class mail, postmarked on or before November 10, 2020. You must send your written opt out notice to:**

Silberstein v. Petsmart, Inc.
c/o Settlement Administrator
P.O. Box 23309
Jacksonville, FL 32241-3309
(800) 789-4102

If your written opt out request is not postmarked on or before November 10, 2020, your request for exclusion will be invalid, and you will be bound by the terms of the settlement approved by the Court, including without limitation, the terms of the Settlement Agreement and the judgment ultimately rendered in the case, and you will be barred from bringing any claims against Defendant which arise out of or relate in any way to the claims in the case as specified in the Release referenced above.

11. If I don't exclude myself, can I sue Defendant for the same thing later?

No. If you do not opt out of the settlement, you will give up any right to sue Defendant for the claims that this settlement resolves regarding the COBRA notice you received.

12. If I exclude myself, will I receive any benefits from this settlement?

No. If you opt out and thereby exclude yourself, you are not part of the settlement and will get no money from it.

The Lawyers Representing the Settlement Class

13. Will I have a lawyer in this case?

The Court has appointed Erica Silberstein as the Class Representative. The Court has appointed Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A., and Marc Edelman of Morgan & Morgan, P.A., as Counsel for the Settlement Class. Class Counsel's contact information is as follows:

Luis A. Cabassa, Esq.
Brandon J. Hill, Esq.
WENZEL FENTON CABASSA, P.A.
1110 North Florida Ave., Suite 300
Tampa, FL 33602
(813) 224-0431
lcabassa@wfclaw.com
bhill@wfclaw.com

Marc Reed Edelman, Esq.
Morgan & Morgan, P.A.
One Tampa City Center, Suite 700
201 N. Franklin Street
(813) 577-4722
MEdelman@forthepeople.com

Counsel for the Settlement Class represent the interests of all of the Settlement Class Members. You may hire your own attorney to advise you regarding this matter and the proposed settlement if you so choose, but you are not required to do so and if you hire your own attorney, you will be responsible for paying that attorney's fees and costs.

14. How will Class Counsel be paid?

Class Counsel will apply to the Court for an award of attorneys' fees, in an amount not to exceed one-third (33.33%) of the Settlement Fund, plus litigation costs. Class Counsel also will seek a service award not to exceed \$7,500 as compensation for the Class Representative. The Court may award less at its discretion. Costs of administration incurred by the Settlement Administrator will also be paid from the Settlement Fund. The amounts approved by the Court for these awards and expenses will be paid directly from the Settlement Fund, and not by you or the other Settlement Class Members.

Objecting to the Settlement

15. How do I tell the Court that I don't like the settlement?

You may object to any aspect of the proposed settlement by filing and serving a written objection. Your written objection must include: (1) your name, address, telephone number, email address and signature; (2) a detailed statement of the specific factual and legal basis for the objection(s) being asserted; (3) a statement of whether your objection pertains to just your individual settlement payment, or whether you are seeking to make a broader

objection relating to some or all of the Settlement Class (4) a notice of your intent to appear at the Final Approval Hearing if you intend to appear; (5) a detailed description of any and all evidence, including copies of any exhibits, which you may offer at the Final Approval Hearing, and (6) must identify this case by the names of the parties and case number (as set forth on the first page of this notice).

You must file any objection with the Clerk of the Court at the address below by November 10, 2020 on the notice of settlement that you received by mail:

United States District Court
Middle District of Florida
Sam M. Gibbons United States Courthouse
801 North Florida Avenue, Tampa, FL 33602.

Any member of the Settlement Class who does not file and serve an objection in the time and manner described above will not be permitted to raise that objection later.

16. Is there a difference between objecting and opting out?

Yes. By objecting, you are simply telling the Court that you don't like something about the Settlement but you are agreeing to be bound by the Settlement as approved by the Court. You may object only if you stay in the Settlement Class. If you elect to opt out of the Settlement Class, you are telling the Court that you do not want to be part of the Settlement. If you opt out and thereby exclude yourself from the settlement, you will have no basis to object because the lawsuit and settlement no longer affect you or any potential claims you may have.

17. Where and when will the Court decide whether to approve the settlement?

There will be a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed settlement on December 4, 2020 at 9:00 a.m. at the United States District Court, Middle District of Florida, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, Courtroom 13B. At the Court's discretion, the hearing may be postponed to a later date so you should visit this website for updates prior to the hearing date set forth above. The purpose of the hearing is to determine the fairness, reasonableness, and adequacy of the terms of settlement; whether the Settlement Class is adequately represented by the Class Representative and Class Counsel; and whether an order and final judgment should be entered approving the proposed settlement. The Court also will consider Settlement Class Counsel's application for an award of attorneys' fees and expenses, and Class Representative's request for a service award.

You will be represented at the Final Approval Hearing by Class Counsel, unless you choose to enter an appearance in person or through your own attorney. The appearance of your own attorney is not necessary to participate in the Final Approval Hearing. Again, should you choose to engage your own attorney, it will be at your own expense.

18. Do I have to come to the hearing?

No. Class Counsel will represent the Settlement Class Members at the Final Approval Hearing, but you are welcome to attend the hearing at your own expense. If you file an objection, you do not have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay your own attorney to attend, if you wish.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing.

Getting More Information

20. Are there more details about the settlement?

For more details regarding the lawsuit or the settlement, you may refer to the papers filed in this case during regular business hours at the Clerk of the Court's office, United States District Court, Middle District of Florida, Sam M. Gibbons United States Courthouse , 801 North Florida Avenue, Tampa, Florida 33602, Clerk's office, File: *Silberstein. v. Petsmart, Inc.*, pending as Case No. 8:19-cv-02800-SCB-AAS.

You may also access papers filed in this case on-line through the Public Access to Court Electronic Records ("PACER") service at www.pacer.gov; however, you may need to create an account and certain fees may apply. You may also obtain a copy of the full Settlement Agreement and certain papers filed in this case by sending a written request to the Settlement Administrator, at the address above. You may also access the full Settlement Agreement and certain pleadings filed in this case on this website.

21. How May I get more information?

You may contact the Settlement Administrator, or Class Counsel, or, Defendant's counsel. Mailing addresses and phone numbers for each are listed below.

Settlement Administrator: American Legal Claims, P.O. Box 23309, Jacksonville, FL 32241-3309, (800) 789-4102.

To Settlement Class Counsel: Luis A. Cabassa, Esq. and Brandon J. Hill, Esq., Wenzel Fenton Cabassa, P.A., 1110 N. Florida Ave., Suite 300, Tampa, Florida 33602, (813) 224-0431.

To Defendant's Counsel: Eric P. Mathisen, Ogletree Deakins, PC – Valparaiso, Suite 302, 56 S. Washington St., Valparaiso, IN 46383, (219) 242-8666.